



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 58 OF 2014

IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT 2013

AND

IN THE MATTER OF THE LAND REGISTRATION ACT

AKN.....APPLICANT

VERSUS

JNM..... RESPONDENT

RULING

1. The application I am called upon to determine is dated 16th June 2015.
2. The Motion is brought at the instance of the applicant. She seeks several orders. She would like the respondent ordered to restore roofing tiles that had been removed allegedly on his instructions. She would also like the water and electricity restored to the premises. She would also like orders to be issued to restrain the respondent from harassing her and her visitors pending the hearing and determination of the suit herein. Regarding the roof tiles, she seeks an additional order that the respondent be required to show cause why committal orders should not be made against him.
3. The application is predicated on the grounds set out on the face of the application, as well as the affidavit in support sworn by the applicant on 16th June 2015. It is alleged that on 11th June 2015, while the applicant was away, the respondent through agents removed and tampered with roof tiles at the Mua property leaving the house exposed to weather elements and insecurity. She fears that the roof has been weakened and might collapse. Her general fear is that these are acts designed to force her out of the home. She complains that electricity disconnected since September 2014 has not been reconnected to date. She states that she has been without water since last year. She complains too that the respondent’s agents have been harassing her visitors by locking them out of the premises. She asserts that all these acts by the respondent are designed to make her occupation of the premises untenable and thus attempting to force her to vacate.
4. Attached to her affidavit are a set of photographs showing the roof of the house where several tiles have been displaced at various spots. The tiles in question have not been removed, but are still on the roof, but dislodged from their place. She has also attached copies of correspondence exchanged between her lawyers and those of the respondent, as well as

correspondence from other persons and entities on the matters at hand.

5. The reply to the application is comprised in three (3) affidavits, sworn by the respondent, Hannington Ayiro, Daniel Muthoka and John Mailu. All of them were sworn on 9th July 2015.

6. In his affidavit, the respondent explains that he had sent a contractor to his Mua home to repair the roof. He denies that he intended to evict the applicant. He states that the reason the furniture were removed from the living room earlier was so as to pave way for the repair of the roof which had leaks. He accuses the applicant of being the one who chased away the contractor and his workers and of stage managing the episode to cast him in bad light. He asserts that although she has involved the police on many occasions on various allegations and claims, no one has been arrested and prosecuted. He denies having chased away her friends and fellow church-goers and states that as a politician and public figure he has legitimate concerns about his security. In the circumstances, he cannot just allow anybody to access his property. He accuses her of entertaining his political rivals at the premises. On the issue of electricity, he states that the applicant chased away the electrician who was to restore electricity. In any event he states, he is not bound to maintain her and she has ran a very high bill which she should settle in the first place. He explains on advice that the tiles that were alleged removed got damaged as the workers were fleeing from bees, but when they went back to repair them the applicant chased them away. The respondent makes reference to certain documents which are not annexed to the affidavit in the court record.

7. Hannington Ayiro, on his part, explains that he had been instructed by the respondent to analyze the roof to assess the repairs that were necessary. He proceeded to the scene on 7th June 2015 in the company of the main contractor called Nianfa Xue. They were taken round the compound by the applicant and workers. On 8th June 2015, they went back to start work, but they disturbed bees that came out of the chimney and began to sting them. The workers scrambled off the roof and in the process destroyed some tiles, which loosened, some leaving gaping holes on the roof. They were forced to abandon the work by the bees. They went back on 11th June 2015 to complete the work. The applicant was not in when they arrived and when they started work. When she eventually came in, she became aggressive and chased them away, saying that they were demolishing the house and bewitching it. A police officer came to the scene and was told so by the applicant. The deponent of the affidavit and his labourers left the scene never to come back for fear of being victimized.

8. John Mailu is an employee of the respondent working at the Mua Farm as manager. He was at the farm on 7th and 8th June 2015. He explains that on 7th June 2015, the contractor, Nianfu Xue, came to the house together with Hannington Ayiro. They checked on the roof to identify the areas needing repair, which they did in the presence of the applicant. Hannington Ayiro returned the following day, 8th June 2015, with workers, to begin the repairs. They climbed to the roof with the new roofing tiles. After about an hour or so, bees came out of the chimney and stung the workers who in the process of scrambling off the roof broke and displaced some of the tiles. The workers thereafter abandoned the task. The deponent was not on duty on 11th June 2015, so he could not testify as to what happened on that day.

9. Daniel Muthoka was a co-manager of the farm. He relieved Mr. Mailu who was to go for leave. On 11th June 2015, police officers came to the farm and stopped the repair work on the roof on implication that they were thieves. He states that the same day, the applicant had demanded that the workers stop work, she hurled insults and stones at them. They left after that. The police came thereafter.

10. The application was argued orally on 27th July 2015. Mrs. Thongori addressed me on behalf of the applicant; while Mr. Omari stated the case for the respondent. Both gave vent to the case put forward by the respective parties in their affidavits.

11. I have anxiously considered the facts placed before me by both sides. I have paid particular attention to the photographs attached to the affidavit of applicant. They do not depict a systematic removal of tiles on a whole section of the house in a manner suggesting an effort to make the house uninhabitable. Rather, they appear to have come off in a few isolated parts, in a manner more consistent with the version of events stated by Hannington Ayiro and John Mailu.

12. From the affidavit of the applicant it would appear that she was not present when the tiles were removed, she says she was informed that the tiles were being removed. This was information from persons who are not disclosed as required by the law on affidavits; and who themselves did not swear any affidavits on what they themselves had seen. I note that the version of events as set out in the affidavits of Hannington Ayiro, John Mailu and Daniel Muthoka, who put the applicant at the scene at the time of the alleged attack on the workers by the bees, necessitating the scramble which allegedly destroyed the tiles, has not been controverted. No affidavits were filed to contradict their stories. I find no basis upon which I can disbelieve them.

13. Am concerned by the fact that these are proceedings of a matrimonial nature. Emotions are no doubt high, and the role of the court ought to be to provide a semblance of balance and a proportion of stability pending the hearing and disposal of the suit.

14. The applicant alleges to be a wife of the respondent, and therefore asserts entitlement to be in occupation of what she describes as her matrimonial home. The respondent on his part argues that she is not his spouse and therefore she is not entitled to occupy the home in her capacity as such. From his papers I understand him to say that she is his former wife, and she was in the premises as a licensee either for the sake of the children or on the invitation of the children. She cannot therefore claim to be on the property as of right, according to him.

15. As at this stage, I do not know whether or not the applicant is a spouse of the respondent or a mere licensee in occupation of the property at the will of the respondent. The current trial is intended to provide evidence that will help me decide the issue either way. The applicant is in the meantime in occupation of the premises. Before I decide either way she should stay put. She is entitled for now to quiet occupation of the premises without any form of disturbance from any side, including the respondent. Her life should not be unduly disrupted in the interim. I am conscious of the fact that the property is in the respondent's name, and it is for that reason that the respondent should continue to issue unascertained access to it. He must, however, respect right of the applicant to remain in occupation pending the hearing and disposal of the suit.

16. I note too that the respondent is a public figure in the political realm. Given the very competitive and rough nature of Kenyan politics, it is understandable for him to raise concerns about his security, and to desire that access to the property be restricted to forestall its infiltration by undesirable elements, who may pose a risk to his person and politics.

17. Peace should prevail pending the hearing and disposal of the matter. The parties ought to exact their energies towards ensuring that the matter is disposed of as soon as possible so that a determination can be made on the status of the applicant once and for all, which will eventually give direction to how the property is to be dealt with thereafter.

18. I will make orders that are designed to ensure that peace prevails. The orders that I will make in the circumstances are:-

- (a) That the respondent shall in the next fourteen (14) days of the date of this order repair the damage to the roof that occurred in the events of 8th June 2015;**
- (b) That thereafter no other works on the property, whether minor or major, shall be undertaken without leave of the court;**
- (c) That the respondent shall report to court in fourteen (14) days why water**

and electricity have not been restored to the premises; and

(d) That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE